THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.23843 of 2006

Date: 15th November, 2007

Between :-

Syed Hassan Ahmed ..

Petitioner

And

The Regional Passport Officer,
Regional Passport Office,
Near Clock Tower, Secunderabad ..
Respondent

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.23843 of 2006

ORDER:-

This Court issued *rule nisi* on 17-11-2006.

2. Heard the Counsel for the writ petitioner.

3. The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondent in issuing the notice dated 26-7-2005 as illegal, arbitrary and contrary to the Judgment reported in 2005 (1) A.L.T., 95 but also contrary to the above Circulate and violative of fundamental rights guaranteed under Article 14, 19 and 21 of the Constitution of India and consequently direct the respondent to correct

the date of birth of the petitioner as 15-7-1983 instead of 2-7-1978 as per Secondary School Certificate Memo issued by the Board of Secondary, A.P., Hyderabad afresh in the interest of the justice and pass such other suitable orders.

4. It is stated that the Writ Petition is filed by the writ petitioner being aggrieved of the action of the respondent in not issuing fresh passport with his correct date of birth i.e., 15-7-1983 instead of 2-7-1978 stating as follows:-

> "Please find enclosed herewith your passport bearing No.B3798103 which is being returned without service, with an advise to apply for correction of date of birth in your passport on the basis of a declaratory decree from the Civil Court of your jurisdiction."

The petitioner also stated that he had completed his Secondary School Education in the year 2000 March and his correct date of birth was shown as 15-7-1983 in the Second School Records and also in his Secondary School Certificate. It is also further stated by the petitioner that he had obtained passport bearing No.3798103 showing his date of birth as 2-7-1978 instead of his correct date of birth through a passport agent and that the agent who secured the passport had procured the passport No.3798103 by furnishing wrong date of birth as 2-7-1978 instead of 15-7-1983 and also stated that the

agent secured the passport on the basis of Notary and that the Notary is not competent authority to issue the date of birth Certificate. Further it is stated by the petitioner that on coming to know the entering of the wrong date of birth in the passport, immediately he approached the respondent for correction of his date of birth as 15-7-1983 in the passport as per his Secondary School Certificate Memo, but the respondent refused to do so and he was told that the petitioner has to get the correct date of birth in the passport through process of Court and refused to entertain his request and issued impugned notice dated 26-7-2005 and that after receiving this notice, he made representation to the respondent authorities to amend his date of birth as mentioned in his Secondary School Memo and Certificate, but the respondent returned his passport and insisted to obtain civil Court declaratory order in this regard. Further it is stated that the question of seeking declaration in civil Court to amend petitioner's date of birth as per Secondary School Memo, Certificate issued by the competent authority in the fresh passport arise only when he obtained earlier passport by filing any certificate issued by the Municipal Corporation or any Educational Institution issued by the competent authority and again if he wants to amend the fresh passport, the declaratory decree is necessary as per Circular issued by the Government of

India as per clause (b) of the Circular dt.18-4-2001. Further it is stated that the Judgment reported in 2005 (1) A.L.T., 95, this Court held as follows in para 4 of the said Judgment:-

> "In AliImran v. Regional Passport Officer, Secunderabad, I have considered the Circular dated 18-4-2001 issued by the Government of India in the Ministry of External Affairs pursuant to the Judgment of the High Court of Judicature at Bombay in Civil W.P.No.1072/2000. The instructions/clarifications issued in the said Circular read as under:
>
> (a) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.
>
> (b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment. PIA may affect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the general clauses Act 1997, a competent authority issuing a Certificate could also make necessary amendments to the same.
>
> (c) Where the initial entry has been made on the basis of a supportive document issued by one

> competent authority i.e., School/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent Court of jurisdiction, certifying the valid date of birth/place of birth.

Further it is stated by the petitioner that the respondent herein issuing notice to him directing him to obtain decree from the competent civil Court applying clause (c) of the Circular is illegal, arbitrary, unwarranted on the ground that when he was obtained earlier passport not producing any certificate issued by either Municipal Corporation or any Education Institution and obtained only on the basis of declaration not supporting any document issued by the competent authority and hence, clause (c) of the above circular is not applicable and therefore the impugned notice dated 26-7-2005 is illegal, unsustainable and also contrary to not only the above circular issued by the Government of India but also contrary to the above reported Judgment delivered by this Court. Further it is stated that the petitioner had produced Secondary School Certificate Memo to prove his correct date of birth as 15-7-1983 and that the petitioner is well supported and

squarely falls in clause (a) of the said circular dt.18-4-2001. Therefore, the petitioner constrained to approach this Court for Justice.

5. The Circular dt.18-4-2001 reads as hereunder:-

Ministry of External Affairs
(PV-I Section)

Circular

___/401/2/5/2001 *18th April, 2001*

As per the current practice, in case of change of date of birth/place of birth, the applicant is required to produce the original declaratory order from a First Class Judicial Magistrate. However in view of the recent Judgment given by the High Court of Judicature at Mumbai in CWP No.1072 of 2000 filed by Shri Jigar Harish Shah, the following clarifications are issued:

(a) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.

(b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment. PIA may affect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the general clauses Act 1997, a competent

authority issuing a Certificate could also make necessary amendments to the same.

(c) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e., School/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent Court of jurisdiction, certifying the valid date of birth/place of birth.

Sd//
(Manju)
Under Secretary (PV-I)

All Passport Issuing Authorities

Copy for information to L&T Division, MEA

6. The learned Counsel placed strong reliance on the decision in ***ALI IMRAN v. REGIONAL PASSPORT OFFICER, SECUNDERABAD***[1] wherein the learned Judge of this Court at paras 3 and 4 observed as hereunder:-

> *"Be it noted that under provisions of the Passports Act, 1967, no power is vested in the Regional Passport Officer to correct entries in the passport. However, pursuant to the Judgment of the High Court of Bombay referred to hereinafter, it is now permissible for the Regional Passport Officer to accept applications for*

rectification/correction. Nonetheless, as per clause (c) above, if an entry had been made on the basis of a supportive document issued by one authority i.e., school or educational authority and subsequently the applicant requests for a change of the entry on the basis of the certificate issued by another authority the passport issuing authority is required to direct the applicant to obtain a proper declaration from the Civil Court.

Having regard to the clarification issued by the Government of India, I directed the learned Standing Counsel for Central Government, Sri K.G.Krishna Murthy to produce a copy of the application made by the petitioner for passport in the year 1999. The application is produced before me today. A perusal of the application along with its enclosures reveal that the petitioner enclosed Secondary School Certificate bearing C019604 dated 10-6-1987 which shows his date of birth as 28-7-1992. Therefore, it cannot be said that an error has crept in the passport issued to the petitioner. As the petitioner is now placing reliance on the on the birth certificate issued by the Registrar of Births and Deaths, Municipal Corporation of Hyderabad, which shows his date of birth as 28-7-1975, his case does not fall within the guidelines/instructions issued by the Government of India. If the petitioner is so advised, he may have to approach the Civil Court or the authorities under the Education Act seeking necessary correction of date of birth in the Secondary School Certificate and then approach the passport

issuing authority. The petitioner's application was rightly not accepted by the respondent."

In ***Mohd.Narsullah Khan v. Regional Passport Officer, Hyderabad***[2] the learned Judge observed at paras 4, 5, 6 and 7 as hereunder:-

"In ***Ali Imran v. Regional Passport Officer, Secunderabad (2003 (4) ALT 474 = 2003 (3) ALD 625,*** *I have considered the Circular dated 18-4-2001 issued by the Government of India in the Ministry of External Affairs pursuant to the Judgment of the High Court of Judicature at Bombay in Civil Writ Petition No.1072 of 2000. The instructions/clarifications issued in the said Circular read as under:*

(a) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.

(b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment. PIA may affect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the general clauses Act 1997, a competent authority issuing a Certificate could also make necessary amendments to the same.

(c) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e., School/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent Court of jurisdiction, certifying the valid date of birth/place of birth.

In view of the above clarifications, I disposed of the said case observing as under:

Be it noted that under the provisions of the Passports Act, 1967, no power is vested in the Regional Passport Officer to correct entries in the passport. However, pursuant to the Judgment of the High Court of Bombay referred to hereinabove, it is now permissible for the Regional Passport Officer to accept applications for rectification/correction. Nonetheless, as per clause (c) above, if an entry had been made on the basis of a supportive document issued by one authority i.e., school or educational authority and subsequently the applicant requests for a change of the entry on the basis of the certificate issued by another authority the passport issuing authority is required to direct the applicant to obtain a proper declaration from the civil Court.

In this case, the petitioner has produced Secondary School Certificate to prove that his correct date of birth is 1-4-1976. Therefore, the claim of the petitioner is well supported and

squarely falls in Clause (a) of the Circular dt.18-4-2001.

Following the Judgment of this Court in ***Ali Imran (referred above)*** *this Writ Petition is also disposed of directing the respondent to consider the application of the petitioner along with the Secondary School Certificate No.PC/01/0190544/2 PRIVATE, issued by the Secretary, Board of Secondary Education, Andhra Pradesh, Hyderabad, and to pass appropriate orders in the light of the observations made in the above Judgment. There shall be no order as to costs."*

7. In the light of the Circular referred to supra and also the views expressed by this Court in the decisions specified above, this Court is of the considered opinion that the refusal on the part of the respondent to correct the date of birth in the Passport in accordance with the Circular is not just and proper. In view of the same, the Writ Petition is disposed of directing the respondent to consider the correction of date of birth in the Passport bearing No.3798103 as per the Secondary School Certificate in accordance with the guidelines specified in the Circular and also in accordance with the views expressed by this Court in the decisions specified supra within a period of four weeks from the date of receipt of this order.

8. The Writ Petition is accordingly disposed of. No order as to costs.

Justice P.S.Narayana

15th November, 2007

Note: CC in three days
(B/o.SMR)

[1] 2003 (3) ALD 625
[2] 2005(1) ALT 95